

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADU-ANSERE KWAME OKAI,

Defendant.

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Case No. 8:05CR19

ORDER

This matter is before the court on the government's motion to reconsider the sentence imposed. Filing No. 41. The government contends that the sentence was imposed without consideration of the United States Sentencing Guidelines. That is not the case. The court considered the Guidelines and sustained defendant's objections to certain findings and calculations in the PSR. See Filing No. 38, Transcript of Proceedings on April 13, 2005, and June 29, 2005 ("Tr.") at 32-33. The government further contends that the court erred in refusing to apply two enhancements that were "clearly established by the oral factual basis supplied by the prosecution at the time of the plea, as well as by the PSR." Filing No. 42, Brief Supporting Motion to Reconsider Sentence Imposed at 1. At the sentencing hearings on both Count I and Count II, the court indicated that a sentencing memorandum would follow. See Tr. at 35, 41; Filing No. 34, Courtroom Minutes. Defendant's contentions are addressed in the sentencing memorandum. See Filing No. 43, Memorandum Opinion at 5, 11 (noting the government presented no evidence on disputed facts and that statements in a PSR are not evidence). Accordingly,

IT IS ORDERED that the motion of the United States to reconsider the sentence imposed, Filing No. 41, is denied.

DATED this 22nd day of August, 2005.

BY THE COURT:

s/ Joseph F. Bataillon

JOSEPH F. BATAILLON

United States District Judge